IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 30924 of 2003(F)

PETITIONER:

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1. PRABHA SREEVALSAN, AGED 55 YEARS,
   D/O. NARAYANAN, MOOLAYIL KOTTIYATH, 17/17A,
   TEMPLE LANE, KASABA AMSOM DESOM, KOZHIKODE TALUK.

2. PRAKASH NARAYANAN S/O.NARAYANAN,
   AGED 5O YEARS, SAGARIKA, PLOT NO.6, SHANTHI NAGAR
   COLONY, KOZHIKODE.

3. RAMESH NARAYANAN, AGED 45 YEARS
   S/O. NARAYANAN, VENGERI AMSOM DESOM,
   KOZHIKODE TALUK.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

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1. U.K.JAYARAJAN, AGED 51 YEARS,
   S/O. U.K.APPU, KALATHINKUNNU AMSOM DESOM,
   KOZHIKODE TALUK.

2. U.K.NALINI, AGED 77 YEARS W/O. APPU,
   KALATHINKUNNU AMSOM DESOM, KOZHIKODE TALUK.

R1 BY ADV. SRI.C.P.MOHAMMED NIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: TRUE COPY OF COMMISSIONER'S REPORT FILED BY THE ADVOCATE COMMISSIONER BEFORE THE MUNSIFF COURT, KOZHIKODE IN O.S.725/01 DT.5.2.03

EXT.P2: -DO- OF THE AFFIDAVIT FILED BY THE RESPONDENTS IN O.S.725/01 BEFORE THE MUNSIFF COURT KOZHIKODE DT.9.7.2003

EXT.P3: -DO- OF THE AFFIDAVIT FILED BY THE PETITIONER IN O.S.725/01 BEFORE THE MUNSIFF COURT KOZHIKODE DT.9.7.03

EXT.P4: -DO- OF THE ORDER IN I.A.2847/03 IN O.S.725/01 MUNSIFF COURT, KOZHIKODE DT.19.7.03

EXT.P5: -DO- OF THE REVIEW PETITION FILED BY THE PETITIOENR IN I.A.2847/03 AS PER I.A.3336/03 IN O.S.725/01 MUNSIFF COURT, KOZHIKODE DT.4.8.03

EXT.P6: -DO0 OF THE ORDER IN W.P(C)25952/03 DT.13.8.03 PASSED BY THIS HONOURABLE COURT

EXT.P7: COPY OF THE ORDER IN I.A.3336/03 IN I.A.NO:2847/03 IN O.S.725/01 ON THE FILE OF THE MUNSIFF'S COURT, KOZHIKODE-I DT. 18.8.03

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No.30924 OF 2003 F

Dated this the 11th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Exts.P4 and P7 orders. Ext.P2 is an application filed by the defendants to remit the commissioner's plan and report. The court found that particulars are available and so no remission is necessary and therefore dismissed the application. Learned counsel for the writ petitioners points out before me that even no counter was filed in the remitting application and that the court has not considered the specific ground that has been averred in the petition in support of a remission. I find from page 8 of the petition that there are points to be noted precisely and categorically stated by the petitioner and the court, instead of considering each of these points had just generalised about the previous conduct of the petitioner and dismissed the application. It is not proper. If the court finds that what has to be looked into is not necessary or is already there, it should have given a definite finding on these points and thereafter dismiss the application. This is a case where even an objection is not filed. Therefore the order suffers from infirmity and it is set aside. The matter is remitted back to the court

below for fresh consideration of I.A. 2874/2003 after permitting the respondents therein to file their objections and then dispose of the matter after hearing both sides. In case the party needs evidence to be adduced, that also may be permitted. Parties are directed to appear before the court below on 8.8.2007. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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